

FIRST AMENDMENT TO AGREEMENT BETWEEN
THE STATE OF ARIZONA AND

SUN VALLEY OWNERS ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION

THIS FIRST AMENDMENT to Agreement ("Amendment") is entered into this 13 day of November, 1987, between the STATE OF ARIZONA, acting by and through its Department of Transportation, hereinafter referred to variously as "ADOT" or "State" and the SUN VALLEY OWNERS ASSOCIATION, an Arizona non-profit corporation, hereinafter referred to as "Association".

WHEREAS, State and Association entered into a certain Agreement ("Agreement") in February of 1987, which provides for the design and construction of a new eight-lane diamond interchange to be constructed at 291st Avenue and Interstate 10 ("Interchange") and the obligations with regard to payment of all costs associated with construction of the Interchange, including but not limited to design, development, acquisition of right of way and relocation of the utilities;

WHEREAS, on March 30, 1987 State, by letter to Association agreed to accept the Supplemental Construction Fund Certification, as hereinafter defined, in the place of the Irrevocable Letter of Credit referred to in the Agreement;

WHEREAS, since the time of the March 30, 1987 letter to the Association referred to above, it has been ascertained the Supplemental Construction Fund Certification, as hereinafter defined, may not permit the State to draw the monthly pay estimate and Statement as hereinafter defined without approval of a third party not subject to the terms of the Agreement and as a result the State has requested Association provide State with an irrevocable letter of credit, as hereinafter defined to assure timely, unconditional payment of the obligation of the Association as defined in the Agreement and this Amendment.

WHEREAS, since the date of entry into the Agreement, the State and Association have endeavored to select a construction manager relating to the construction of the Interchange and have agreed the State due to its experience should serve as construction manager on certain terms and conditions as hereinafter provided;

WHEREAS, contrary to the terms of the Agreement relating to the payment for construction of the Interchange, all payments of the monthly pay estimates will be made by the First Interstate Bank of Arizona, N.A., as Trustee.

THEREFORE, Association and State agree the Agreement shall be amended and modified as follows:

1. The following is inserted after the second paragraph of the Agreement beginning "WHEREAS":

WHEREAS, the State has
experience and special expertise with

regard to all aspects of construction of interchanges on the State highway system within the State of Arizona.

2. Paragraph 2 of the Agreement under the heading "ASSOCIATION SHALL:" is deleted and the following inserted in its place:

2. Compensate the State in the manner hereinafter provided for State's services as construction manager responsible for staking, inspection, testing, budgeting and construction accounting for all costs and expenses, and complete management relating to the construction of the Interchange.

3. Paragraph 3, under the heading "ASSOCIATION SHALL:" is deleted, and the following inserted in its place:

3. Pursuant to the certain Supplemental Construction Fund Certification in the form attached hereto as Exhibit "A", the First Interstate Bank of Arizona, N.A., as Trustee, has allocated up to \$3,900,000 for payment of the total cost for construction of the Interchange and for payment in accordance with the terms of this Agreement.

4. Paragraph 4. under the heading "ASSOCIATION SHALL:" shall be deleted, and the following inserted in its place:

4. When the State has received bids for the construction of the Interchange, the Association, in conjunction with ADOT, shall determine if a construction contract shall be awarded. If the construction contract is awarded, the Supplemental Construction Fund Certification may at the election of the Association be amended to allocate an amount which conforms to the amount of the successful bidder's estimated cost of construction and the estimated compensation for the services of the State as construction manager as referred to in Paragraph 6. under the heading "STATE SHALL:" herein. Further, to assure an unconditional source of payment for the construction of the Interchange and

the estimated compensation for the services of the State as construction manager as referred to in Paragraph 6. under the heading "STATE SHALL:" herein, the Association shall deposit with the State, its irrevocable letter of credit in a form acceptable to the State in the amount of \$3,800,000. issued by Pima Savings and Loan Association ("Letter of Credit"). The Letter of Credit shall be irrevocable for one year from its effective date. The Letter of Credit shall be available for disbursement in the event the Association does not cause the First Interstate Bank of Arizona, N.A., as Trustee under the Supplemental Construction Fund Certification to deposit with the State an amount of money equal to the monthly pay estimate and Statement as referred to in Paragraph 5. under the heading "ASSOCIATION SHALL:" prior to the twenty-first (21st) day following delivery of a copy of the monthly pay estimate and Statement to the Association. In the event the Letter of Credit becomes available for disbursement as provided herein, State shall provide at least five (5) business days notice to Pima Savings and Loan Association, Attn: Robert Lass, Senior Vice-President, at P.O. Box 12768, Tucson, Arizona 85732 and the Association, at 4520 N. Central Ave., Suite 500, Phoenix, Arizona 85012, of its intent to draw on the Letter of Credit and the Letter of Credit shall be available for disbursement only to the extent of the amount of money represented by the then outstanding monthly pay estimate and Statement, and all future monthly pay estimates and Statements shall be paid in accord with the provisions of Paragraph 5. under the heading "ASSOCIATION SHALL:" subject to the terms of this paragraph. In the event a monthly pay estimate and Statement are paid from the Letter of Credit, the acceptance of such payment by State shall be deemed the irrevocable assignment by State to Pima Savings and Loan Association of all of its rights to

the proceeds of the Supplemental Construction Fund relating only to the amount paid from the Letter of Credit relating to the applicable monthly pay estimate and Statement. The amount of the Letter of Credit shall be deemed reduced by the amount of any payment from the Letter of Credit. Any monthly pay estimate and statement paid from the Supplemental Construction Fund to State, except for a monthly pay estimate and Statement previously paid by the Letter of Credit and reimbursed to Pima Savings and Loan Association, shall be deemed to reduce the amount of the Letter of Credit by the amount of payment from the Supplemental Construction Fund. Irrespective of the existence of both the Letter of Credit and Supplemental Construction Fund the maximum amount the State shall be entitled to withdraw from both sources shall be limited to \$3,800,000. If it is determined that a construction contract should not be awarded, then the Association agrees to reimburse the State of Arizona for its actual costs in preparing this project for bidding, not to exceed \$25,000.

5. Paragraph 5 under the heading "ASSOCIATION SHALL:" shall be deleted, and the following inserted in its place:

5. During construction, the Association agrees on a monthly basis to cause the deposit of an amount of money for payments to the contractor and State, as construction manager, as hereinafter referred to, equal to the monthly pay estimate and Statement prepared by the State. The State shall prepare the monthly pay estimate and Statement by the 25th of each month based upon contractors' performance and State's performance as construction manager during the preceding 30-day period and shall promptly deliver copies to the Association. At any time following delivery of any monthly pay estimate to the Association, representatives of the Association, Heron Financial Corporation, and

Security Pacific National Bank shall have the right on reasonable notice to the State to review and make photocopies of all construction pay documents, plans, specifications and all documents, financial records and other materials relating to the monthly pay estimate and to question personnel of the State as to the compilation of documents and calculations comprising the monthly pay estimate. The Association shall, within ten (10) days after receipt of the monthly pay estimate and Statement, cause the Trustee to deposit with the State an amount of money equal to the monthly pay estimate and Statement. If payment by the Association and Trustee is not made within twenty (20) days following delivery of a copy of the monthly pay estimate and Statement to the Association, the State may draw the delinquent monthly pay estimate and Statement on the twenty-first (21st) day directly from the Letter of Credit as referred to in Paragraph 4. under the heading "ASSOCIATION SHALL:", without further act of the Association or Trustee.

6. Following Paragraph 4 of the Agreement under the heading "STATE SHALL:" the following shall be inserted as new numbers 5 and 6:

5. Serve as construction manager who will, subject to the terms of this Agreement, be responsible for staking, inspection, testing, serve as general manager for construction of the Interchange and present the monthly Statement, as hereinafter defined for its construction management costs. The State, as construction manager, will cooperate with the Association with regard to all aspects of the construction of the Interchange. The Association shall pay State for its services as construction manager as hereinafter provided.

6. State shall be compensated for its services as construction manager for the construction of the Interchange as referred to in

Paragraph 5 hereof on the basis of its actual costs incurred in carrying out its construction management duties as described herein. State shall provide a statement itemized as to actual service and its actual cost for construction management without any charge for overhead or profit ("Statement") once each calendar month concurrent with submission of the monthly pay estimate referred to in Paragraph 5 under the heading "ASSOCIATION SHALL". All documents and records compiled by State in preparing its itemized statement shall be made available to Association, representatives of Heron Financial Corporation, and Security Pacific National Bank and their agents for inspection and copying at any time on reasonable notice. Notwithstanding the foregoing, the maximum total compensation to be paid to the State relating to its services as construction manager for the construction of the Interchange will not exceed seventeen percent (17%) of the original amount of the construction contract as referred to in Paragraph 4 under the heading "ASSOCIATION SHALL" without regard to any change or modification thereto subsequent to entry into said construction contract.

7. Paragraph 5 of the Agreement under the heading "STATE SHALL:" shall be deleted and the following inserted in its place:

7. Appoint a resident engineer, who shall serve as the construction manager for the administration of the contract; the satisfactory completion in accordance with plans and specifications and approved change orders. The resident engineer shall have final authority for all decisions relating to staking, inspection and testing; the quality and acceptability of materials furnished and work performances; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract and all

questions relating to compensation due contractor. Further, the State as construction manager shall have the certain duties and responsibilities set forth herein.

8. Paragraph 6 of the Agreement under the heading "STATE SHALL:" shall be deleted, and the following inserted in its place:

8. Immediately after approval of the plans and specifications, submit the complete bid package to Association for approval, solicit bids, award a contract for the Interchange construction and improvements and administer the construction contract to completion as construction manager.

9. Paragraph 7 of the Agreement under the heading "STATE SHALL:" shall be deemed renumbered as Paragraph 9.

10. A new Paragraph 10 shall be added to the Agreement after Paragraph 7 under the heading "STATE SHALL:" which has been renumbered as Paragraph 9, which shall read as follows:

10. Notwithstanding the activities of State through its resident engineer and as construction manager, representatives of the Association, Heron Financial Corporation and Security Pacific National Bank shall have the right but not the obligation to "monitor" all aspects of construction of the Interchange (including, without limitation, payment and accounting records). The term "monitor" shall mean to observe and review, but shall grant no right or authority with respect to construction of the Interchange. Such monitors shall have no authority with respect to actual construction or payment for construction and shall have no liability or responsibility in connection therewith.

11. Paragraphs 8 and 9 of the Agreement under the heading "STATE SHALL:" shall be deemed renumbered as Paragraphs 11 and 12.

12. Paragraph 2 of the Agreement under the heading "THE PARTIES MUTUALLY AGREE AS FOLLOWS:" shall be deleted and the following inserted in its place.

2. In the event any controversy arises out of this Agreement and relating to the terms and provisions of this Agreement, the parties (including the State acting in its capacity as construction manager as referred to herein) agree as follows:

(a) Prior to executing a contract for the construction of the Interchange, in the event there are disputes between the State and Association pertaining to the design, Plans and Specifications for the Interchange or cost, the parties agree to select an independent third party arbitrator with regard to the dispute and the decision of the third party arbitrator shall be deemed binding on the parties.

(b) In the event of a dispute between the State and Association subsequent to entry into construction contract for the Interchange, an independent third party shall be appointed by the parties and the decision of such arbitrator shall be deemed binding on the parties. The rules for such arbitration shall be the rules of the American Arbitration Association and any decision shall be enforceable in a court of competent jurisdiction.

(c) In the event the parties cannot agree upon the selection of an independent third party arbitrator within thirty (30) days, the matter shall be referred to the American Arbitration Association, Construction Arbitration Division for determination. A determination by the American Arbitration Association shall be binding upon the parties as provided herein. The parties agree that a hearing will be requested within thirty (30) days from the demand for the American Arbitration Association arbitration.

13. The Letter of Credit shall be deposited in a form approved by State on or before thirty (30) days after execution of this Amendment. In the event no approved Letter of Credit is received by the

State within thirty (30) days of the date hereof, the State shall reserve the right to cancel and terminate any pending construction contract without penalty for construction of the Interchange and in such event the Association shall either cause the State to re-bid the construction of the Interchange or to determine the construction should not proceed and reimburse the State for its actual costs in accord with Paragraph 4 under the heading "ASSOCIATION SHALL:" of the Agreement.

14. The term "business days" as used herein shall mean normal business days which shall not include Saturday or Sunday or any legal holiday recognized in the State of Arizona.

15. Except as amended and modified by this Amendment, the Agreement shall remain binding and in full force and effect in accordance with its terms.

16. The parties agree this Amendment may executed in counterpart and that all of the individually partially executed copies shall be deemed one Amendment and shall be binding on the parties.

IN WITNESS WHEREOF, the parties have executed this Amendment on the date and year first above written.

STATE:

STATE OF ARIZONA, ARIZONA
DEPARTMENT OF TRANSPORTATION

By: 

W.O. Ford, State Engineer

ASSOCIATION:

SUN VALLEY OWNERS ASSOCIATION, an
Arizona non-profit corporation

By: 

Robert M. Williams
Its President

SUPPLEMENTAL CONSTRUCTION FUND CERTIFICATION

The undersigned, as Trustee under that certain Indenture of Trust dated as of March 1, 1987 (the "Indenture") between First Interstate Bank of Arizona, N.A., as Trustee (the "Trustee") and Sun Valley Public Improvement Corporation (the "Corporation"), hereby certifies as follows pursuant to Section 5.05(e) of the Indenture:

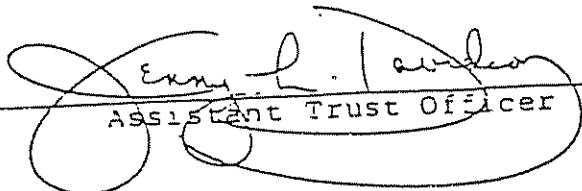
1. On the date hereof, \$7,750,000 was deposited into the Supplemental Construction Fund established and maintained pursuant to the Indenture;
2. Section 5.05(e) of the Indenture provides that the moneys in the Supplemental Construction Fund are to be used for the purpose of acquiring or constructing the following portions of the Improvements:
 - a. the connection with West Bell Road located in the Town of Surprise, Arizona;
 - b. the connection with and extension of the Palo Verde interchange on Interstate 10; and
 - c. any other portion of the Improvements located in any other city or town, including but not limited to the Town of Buckeye.
3. Based solely upon the attached certification of the Company, such moneys are allocated irrevocably for disbursement as follows:
 - a. up to \$3,000,000 for the Town of Surprise connection with and widening of West Bell Road;
 - b. up to \$3,900,000 to the payment for the connection with and extension of the Palo Verde interchange on Interstate 10, to be disbursed in accordance with the agreement between the Arizona Department of Transportation and the Sun Valley Owners Association;
 - c. up to \$1,340 for the portion of the Improvements located in the Town of Buckeye; and
 - d. up to \$250,000 for the acquisition of that portion of the Improvements under the jurisdiction of the Maricopa County Water Conservation District No. 1.

4. All such moneys will be disbursed in accordance with Section 3.2 of the Development Agreement and Section 5.05(e) of the Indenture.

Dated: March 30, 1987.

FIRST INTERSTATE BANK OF ARIZONA, N.A.

By


Assistant Trust Officer

AGREEMENT BETWEEN THE STATE OF ARIZONA AND SUN VALLEY
OWNERS ASSOCIATION, an Arizona nonprofit corporation

THIS AGREEMENT ("Agreement") is entered into this 13th of February, 1987, between the THE STATE OF ARIZONA, acting by and through its Department of Transportation, hereinafter referred to variously as "ADOT: or "State" and the SUN VALLEY OWNERS ASSOCIATION, an Arizona nonprofit corporation, hereinafter referred to as "Association".

WHEREAS, State is empowered by Section 28-108, Arizona Revised Statutes to enter into this Agreement and has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and the Director of the Arizona Department of Transportation has delegated to the undersigned the authority to execute same on behalf of the State;

WHEREAS, Association desires to cause a new eight-lane diamond interchange to be constructed at 291st Avenue and Interstate 10 ("Interchange") and the Association agrees to pay all costs associated with the new eight-lane diamond interchange, including but not limited to design, development, acquisition of Right of Way, relocation of utilities, and construction.

Therefore, Association and State agree as follows:

ASSOCIATION SHALL:

1. Complete the preparation of all plans and specifications ("Plans and Specifications") for the construction of an eight-lane interchange at 291st Avenue and Highway I-10 for State approval. In December, 1986, the Association submitted preliminary plans to the State for review.

2. Select, with State approval, a construction manager who will be responsible for staking, inspection, testing and serve as general manager for construction of the Interchange. The construction manager shall be retained and paid by Association at Association's sole expense.

3. Upon approval of the plans and specifications by the State, the Association shall deposit with the State, its irrevocable letter of credit in a form acceptable to the State in the amount of \$3,900,000 which is an estimate of the total cost for the construction of the Interchange.

Amended

Amended

Amended

4. When the State has received bids for the construction of the Interchange, the Association, in conjunction with ADOT, shall determine if a construction contract shall be awarded. If the construction contract is awarded, the Association's letter of credit shall be amended to conform to the amount of the successful bidder's estimated cost of construction. If it is determined that a construction contract should not be awarded; then the Association agrees to reimburse the State of Arizona for its actual costs in preparing this project for bidding, not to exceed \$25,000.

Amended

5. During construction, the Association agrees to deposit on a monthly basis an amount of money for payment to the contractor equal to the Monthly pay estimate prepared by the State. The State shall make the monthly pay estimate by the 25th of each month based on the contractors performance during the preceding 30-day period and shall promptly deliver a copy to the Association. The Association shall, within ten days after receipt of monthly pay estimate, deposit with the State an amount of money equal to the monthly estimate. If payment by the Association is not made within 20 days following delivery of a copy of the monthly pay estimate to the Association, the State may draw the delinquent monthly pay estimate from the letter of credit deposited by the Association.

6. In addition to all costs as heretofore mentioned, the Association agrees to pay all costs related to construction change orders, delays, or claims for extra compensation made by the contractor.

STATE SHALL: (Except as noted, the following items shall be performed at State expense.)

1. By its execution of this Agreement, the State has agreed to accept certain plans and specifications for construction of the new Interchange.

2. Obtain all necessary approvals for the addition of the Interchange.

3. Provide all necessary rights-of-way for construction of the Interchange to the extent the right of way is held by the State. The parties acknowledge that all rights-of-way necessary for the Interchange are currently held by State. Any additional right-of-way which is later determined to be necessary for the construction of the Interchange shall be acquired by State at the sole expense of the Association.

4. Follow established State procedures for the bidding of the project.

Amended
5. Appoint a resident engineer, who shall cooperate with the construction manager for the administration of the contract; the satisfactory completion in accordance with plans specifications and approved change orders. The resident engineer and the Construction manager shall jointly decide all questions relating to the quality and acceptability of materials furnished and work performed; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract and all questions relating to compensation due the contractor.

Amended
6. Immediately after approval of the Plans and Specifications, submit the complete bid package to Association for approval, and upon such approval, solicit bids, award a contract for the Interchange construction and improvements and administer the construction contract to completion in conjunction with the construction manager.

Amended
7. Immediately after the construction contract is awarded, proceed with the construction of the Interchange.

8. Accept, upon completion, the Interchange as a part of the State Highway System.

9. Refund to Association any monies donated and not used on this project for whatever reason.

10. Added by amendment

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. The parties hereto acknowledge this Agreement is subject to cancellation by the Governor pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

Amended
2. In the event any controversy arises out of this Agreement and relating to terms or provisions of this Agreement, the parties agree as follows:

(a) Prior to executing a contract for the construction of the Interchange, in the event there are disputes between the State and Association pertaining to the design, Plans and Specifications for the Interchange or cost, the parties agree to select an independent third party as arbitrator with regard to the dispute and the decision of the third party arbitrator shall be deemed binding on the parties.

(b) In the event of a dispute between the State and Association subsequent to entry into the construction contract for the Interchange, an independent third party shall be appointed by the parties and the decision of such arbitrator shall be deemed binding on the parties.

(c) In the event the parties cannot agree upon the selection of an independent third party arbitrator within thirty (30) days, the matter shall be referred to the American Arbitration Association, Construction Arbitration Division for determination. A determination by the American Arbitration Association shall be binding upon the parties. The parties agree that a hearing will be requested within (30) days from the demand for the American Arbitration Association arbitration.

3. The parties agree that all costs incurred relating to the independent third party arbitrator or the American Arbitration Association, Construction Arbitration Division shall be borne equally by the two parties.

4. To the extent permitted by law, State and Association agree to defend, indemnify, and hold harmless each other and their agents, officials, employees and subsidiaries, from and against any and all claims, actions, demands, liability, damage, cost and expense of whatsoever character whether direct or indirect, or consequential, including loss damage to property of either party hereto or of their persons and for the injury or death to any or all persons caused by or attributable to the negligence or fault of the State or Association, their employees or agents. As to any liability claims where the parties hereto may be jointly at fault, whether or not a named defendant to an action, the parties agree that they will share in any settlement or judgment in the amount that is proportionate to the degree of negligence or fault of the respective parties as agreed to between them or adjudicated by the courts.

5. The parties acknowledge and agree this project is being funded by the Association and the Association shall be solely responsible for all approved costs. The State agrees the County of Maricopa shall have no liability or obligation whatsoever and is hereby released by both parties with regard to the subject matter of this Agreement as well as any responsibility with regard to the construction of the Interchange, its future operation and maintenance.

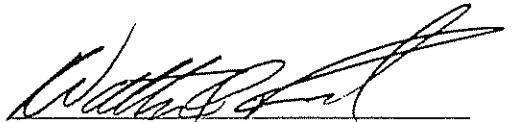
6. In the event the contractor or Association fails to complete construction, the State agrees to complete the construction, utilizing Association funds and/or the surety bond posted by the contractor.

7. This agreement shall be effective as of date of execution.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

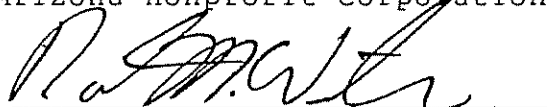
STATE:

STATE OF ARIZONA, ARIZONA
DEPARTMENT OF TRANSPORTATION

By: 
W. O. Ford, State Engineer

ASSOCIATION:

SUN VALLEY OWNERS ASSOCIATION,
an Arizona nonprofit corporation

By: 
Robert M. Williams,
Its President

3701G